IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

MOTION REQUESTING ORDER

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

This morning, the parties went to the CEMEX plant in Ponce in order to effect a site inspection and an inventory of AWMR's equipment and materials at the site. AWMR deemed this course prudent while the Court issued it opinion in the matter at hand, and because it had information that placed Ecoterra back the CEMEX plant in Ponce actively working on the dismantling of the same. In order to do this, Plaintiff had informed counsel for CEMEX that they would be bringing a video camera.

Defendants objected to the inspection, stating that only an inventory of the AWMR

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equipment of the site could be made. AWMR was under the impression that the site would be toured and inspected, and that then an inventory would be taken – after all, the fact that it is believed that Ecoterra is back on the site and obtaining the metals harvested by AWMR is one of the primary reasons why Plaintiff filed its motion requesting a TRO. It requested that it be permitted to continue with the site inspection – after all, the parties were already there, and CEMEX security personnel were escorting them around the plant. CEMEX denied this request, and AWMR was told that the inspection would have to be rescheduled for another date.

CEMEX's bad faith in this matter is evident, particularly when all parties had already undertaken the lengthy trip from San Juan to Ponce and were already present at the site. Why CEMEX could not authorize AMWR to tour the site and to photograph the state of the plant speaks volumes about its motives, particularly if CEMEX has nothing to hide, and is not allegedly permitting exit from the plant of any metals object of this case, as it represented to this Honorable Court at the hearing held on June 10, 2007.

Further evidencing CEMEX's bad faith is the fact that AWMR was not allowed to compete its inventory. Not all AWMR equipment was situated where the CEMEX plant itself is; some was also located in the compound at a nearby site which is also owned by CEMEX. This site, called by AWMR employees the "motor pool" – because they had unloaded and stored several motors there – is located across the street from where the plant is located. When AWMR stated that they had equipment at the motor pool which they needed to inspect in order to complete their inventory, they were denied access to the motor pool, as the inventory permission was for the equipment located "at the plant only". It is bizarre that CEMEX prevented AWMR's tour of the site, alleging that it had to be rescheduled because the permission issued was only for the inventory. Then AWMR was ultimately denied a complete inventory - the very thing that CEMEX alleged it had given permission for!

This distinction without a difference is disingenuous at best, and only serves to further cast doubt on CEMEX's word and intentions. AWMR drove by the motor pool upon exiting the CEMEX complex and saw Ecoterra employees cutting metal in the precise area where the AWMR equipment is located – including a blue container – and where AMWR was in fact cutting its metals. Furthermore, at least one vehicle belonging to Mr. Barsotelli, co-Defendant Ecoterra's President, was also at the site. *See Exhibit 1* to this Motion.

AWMR cannot say this more clearly: **today, and on several other days, it has personally witnessed Ecoterra employees actively working and cutting up metals at the site where AWMR equipment and harvested metals are located**. CEMEX has denied that this is going on, yet eyewitness accounts belie this assertion. *See Exhibit 1*. Once again, AWMR respectfully requests that the Court issue the TRO requested, until the Court is in a position to hear evidence in this matter.

While AWMR understands the Court's position as espoused in the hearing held on August 10, the fact that Ecoterra is actively working on the site only serves to further compromise Plaintiff's position. Without an order from this Honorable Court preventing Ecoterra access to the CEMEX site and from removing metals from the site, AWMR's harm is increased. Because it does not know the amount of material already removed by Ecoterra, it is unable to quantify the harm it is suffering; as time progresses with no order preventing removal in place, so too does the harm to AWMR progress and increase. In fact, during the phone call the parties held on August 13, 2007 in compliance with this Court's Order, counsel for Ecoterra actually acknowledged that his client, Mr. Barsotelli, was on the site, but clarified that he was not at the "concretera", presumably where the concrete is mixed. This clearly evidences Ecoterra has been continuously allowed entry to the CEMEX site even after this lawsuit was filed. Ecoterra's actions beg the question: If it is not removing harvested metal, what is it doing at the CEMEX site? CEMEX's actions in allowing Ecoterra access to the site and allowing harvesting of AWMR's metal, as witnessed by AWMR staff, are causing great harm to it and are making a mockery out of this Court's authority. We respectfully request the Court not to let this behavior proceed any further.

WHEREFORE, AWMR respectfully requests that the Court **GRANT** this motion in its entirety, together with any further relief it deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of August, 2007.

INDIANO & WILLIAMS, P.S.C.
207 del Parque Street
Third Floor
San Juan, Puerto Rico 00912
Tel.: (787) 641-4545 / FAX: (787) 641-4544

By: s/ Jeffrey M. Williams
JEFFREY M. WILLIAMS
U.S.D.C.P.R. Bar No. 202414
jeffrey.williams@indianowilliams.com

By: s/ Ada Sofia Esteves
ADA SOFIA ESTEVES
USDC PR Bar No. 216910
sofia.esteves@indianowilliams.com